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6 Attorneys for Defendants
CITY OF OAKLAND and
7 ROSS TISDELL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

KEN PHELON,

Plaintiff,

V.

JEREMY D. HAMMAN, ALAMEDA
COUNTY (CA) SHERIFF DEPUTY, OFFICER
ONE, OAKLAND (CA) POLICE OFFICER,
OFFICER TWO, OAKLAND POLICE
OFFICER, OFFICER THREE, OAKLAND
POLICE OFFICER, OFFICER FOUR,
OAKLAND POLICE OFFICER, ROSS
TISDELL SUPERVISOR, ALAMEDA
COUNTY SHERIFF DEPARTMENT,
ALAMEDA COUNTY SHERIFF
DEPARTMENT, OAKLAND POLICE
DEPARTMENT, CITY OF OAKLAND,
COUNTY OF ALAMEDA.

Case No. C09-03393 SBA

**ANSWER OF DEFENDANTS CITY OF
OAKLAND AND ROSS TISDELL TO
COMPLAINT**

Defendants.

24 Defendants CITY OF OAKLAND and ROSS TISDELL hereby answer, object, and
25 otherwise respond to the Plaintiff KEN PHELON's pro se civil rights Complaint on file herein as
26 follows:

Introduction

2 1. Defendants deny that this is an action in equity as Plaintiff seeks compensatory and
3 punitive damages against Defendants. Defendants are without knowledge or information sufficient
4 to form a belief as to the truth of the remaining allegations in this paragraph and on that basis, deny
5 each and every allegation contained herein.

6 2. Defendants are without knowledge or information sufficient to form a belief as to
7 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
8 contained herein.

9 3. Defendants are without knowledge or information sufficient to form a belief as to
10 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
11 contained herein.

12 4. Defendants are without knowledge or information sufficient to form a belief as to
13 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
14 contained herein.

15 5. Defendants are without knowledge or information sufficient to form a belief as to
16 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
17 contained herein.

18 6. Defendants are without knowledge or information sufficient to form a belief as to
19 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
20 contained herein.

21 7. Defendants are without knowledge or information sufficient to form a belief as to
22 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
23 contained herein.

24 8. Defendants are without knowledge or information sufficient to form a belief as to
25 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
26 contained herein.

Parties

2 1. Defendants are without knowledge or information sufficient to form a belief as to
3 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
4 contained herein.

5 2. Defendants admit that Defendant ROSS TISDELL is employed by City of Oakland
6 as a police officer. As to the remaining allegations, Defendants are without knowledge or
7 information sufficient to form a belief as to the truth of the allegations in this paragraph and on that
8 basis, deny each and every remaining allegation contained herein.

9 3. Defendants admit that the City of Oakland is a municipal corporation and the
10 employer of Defendant ROSS TISDELL.

Jurisdiction

12 1. Defendants are without knowledge or information sufficient to form a belief as to
13 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
14 contained herein.

15 2. 2(1) – 2(2) - Defendants are without knowledge or information sufficient to form a
16 belief as to the truth of the allegations in this paragraph and on that basis, deny each and every
17 allegation contained herein.

18 Defendants deny that this court has jurisdiction to issue a Writ of Mandate as requested by
19 Plaintiff's prayer for relief or to stay the pending Alameda County Superior Court case, identified
20 by Plaintiff as Docket #544687.

No exhaustion requirement

22 1. Defendants are without knowledge or information sufficient to form a belief as to
23 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
24 contained herein.

Qualified immunity & notice requirement

26 1. Defendants are without knowledge or information sufficient to form a belief as to

1 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
2 contained herein.

3 2. Defendants are without knowledge or information sufficient to form a belief as to
4 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
5 contained herein.

Statement of facts

7 1. Defendants are without knowledge or information sufficient to form a belief as to
8 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
9 contained herein.

10 | 2. Defendants deny the allegations set forth in this paragraph.

11 ||| 3. Defendants deny the allegations set forth in this paragraph.

12 || 4. Defendants deny the allegations set forth in this paragraph.

13 | 5. Defendants deny the allegations set forth in this paragraph.

14 6. Defendants are without knowledge or information sufficient to form a belief as to
15 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
16 contained herein.

17 7. Defendants are without knowledge or information sufficient to form a belief as to
18 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
19 contained herein.

20 8. Defendants are without knowledge or information sufficient to form a belief as to
21 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
22 contained herein.

23 9. Defendants are without knowledge or information sufficient to form a belief as to
24 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
25 contained herein.

26 Note: Defendants are without knowledge or information sufficient to form a belief as to

1 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
2 contained herein.

3 10. Defendants are without knowledge or information sufficient to form a belief as to
4 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
5 contained herein.

6 11. Defendants are without knowledge or information sufficient to form a belief as to
7 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
8 contained herein.

9 12. Defendants deny the allegations set forth in this paragraph.

10 13. Defendants are without knowledge or information sufficient to form a belief as to
11 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
12 contained herein.

13 14. Defendants are without knowledge or information sufficient to form a belief as to
14 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
15 contained herein.

16 15. Defendants are without knowledge or information sufficient to form a belief as to
17 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
18 contained herein.

19 16. Defendants are without knowledge or information sufficient to form a belief as to
20 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
21 contained herein.

22 17. Defendants are without knowledge or information sufficient to form a belief as to
23 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
24 contained herein.

25 18. Defendants are without knowledge or information sufficient to form a belief as to
26 the truth of the allegations in this paragraph and on that basis, deny each and every allegation

1 contained herein.

2 19. Defendants are without knowledge or information sufficient to form a belief as to
3 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
4 contained herein.

5 20. Defendants are without knowledge or information sufficient to form a belief as to
6 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
7 contained herein.

8 21. Defendants deny the allegations set forth in this paragraph.

9 22. Defendants deny the allegations set forth in this paragraph.

10 23. Defendants deny the allegations set forth in this paragraph.

11 24. Defendants are without knowledge or information sufficient to form a belief as to
12 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
13 contained herein.

14 25. Defendants are without knowledge or information sufficient to form a belief as to
15 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
16 contained herein.

17 Note: Defendants are without knowledge or information sufficient to form a belief as to the
18 truth of the allegations in this paragraph and on that basis, deny each and every allegation contained
19 herein.

20 26. Defendants are without knowledge or information sufficient to form a belief as to
21 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
22 contained herein.

23 27. Defendants are without knowledge or information sufficient to form a belief as to
24 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
25 contained herein.

26 28. Defendants are without knowledge or information sufficient to form a belief as to

1 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
2 contained herein.

3 29. Defendants are without knowledge or information sufficient to form a belief as to
4 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
5 contained herein.

6 30. Defendants are without knowledge or information sufficient to form a belief as to
7 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
8 contained herein.

9 31. Defendants are without knowledge or information sufficient to form a belief as to
10 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
11 contained herein.

12 32. Defendants admit that Sgt. Donovan and Officer Lee went to Plaintiff's home to
13 respond to plaintiff's wish to file a complaint about unknown officers putting his friend Jolicia
14 Kelley into the trunk of a vehicle and driving away. Defendants deny that the officer's visit was on
15 December 5, 2008. As to the remaining allegations, Defendants are without knowledge or
16 information sufficient to form a belief as to the truth of the allegations in this paragraph and on that
17 basis, deny each and every allegation contained herein.

18 33. Defendants are without knowledge or information sufficient to form a belief as to
19 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
20 contained herein.

21 34. Defendants are without knowledge or information sufficient to form a belief as to
22 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
23 contained herein.

24 35. Defendants are without knowledge or information sufficient to form a belief as to
25 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
26 contained herein.

1 36. Defendants are without knowledge or information sufficient to form a belief as to
2 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
3 contained herein.

4 37. Defendants deny the allegations set forth in this paragraph.

5 38. Defendants deny the allegations set forth in this paragraph.

6 39. Defendants deny the allegations set forth in this paragraph.

7 40. Defendants deny the allegations set forth in this paragraph.

8 41. Defendants are without knowledge or information sufficient to form a belief as to
9 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
10 contained herein.

11 42. Defendants are without knowledge or information sufficient to form a belief as to
12 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
13 contained herein.

14 43. Defendants are without knowledge or information sufficient to form a belief as to
15 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
16 contained herein.

17 44. Defendants are without knowledge or information sufficient to form a belief as to
18 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
19 contained herein.

20 45. Defendants are without knowledge or information sufficient to form a belief as to
21 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
22 contained herein.

23 46. Defendants are without knowledge or information sufficient to form a belief as to
24 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
25 contained herein.

26 47. Defendants are without knowledge or information sufficient to form a belief as to

1 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
2 contained herein.

3 a) Defendants are without knowledge or information sufficient to form a belief as to
4 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
5 contained herein.

6 b) Defendants are without knowledge or information sufficient to form a belief as to
7 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
8 contained herein.

9 48. Defendants are without knowledge or information sufficient to form a belief as to
10 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
11 contained herein.

12 49. Defendants are without knowledge or information sufficient to form a belief as to
13 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
14 contained herein.

15 50. Defendants are without knowledge or information sufficient to form a belief as to
16 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
17 contained herein.

18 51. Defendants are without knowledge or information sufficient to form a belief as to
19 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
20 contained herein.

21 52. Defendants are without knowledge or information sufficient to form a belief as to
22 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
23 contained herein.

24 53. Defendants deny the allegations set forth in this paragraph.

25 54. (a)-(j) - Defendants deny the allegations set forth in this paragraph and its
26 subsections.

11

Count I

42 U.S.C. 1983 Conspiracies to Violate Civil Rights Against Individual Defendant Hamman and Defendant Officers One, Two, Three, and Four violation of his civil rights under color of law.

5 55. Defendants incorporate herein their responses to the allegations contained in
6 paragraphs 1

7 through 54, as previously set forth.

8 ||| 56. Defendants deny the allegations set forth in this paragraph.

9 ||| 57. Defendants deny the allegations set forth in this paragraph.

10 || 58. Defendants deny the allegations set forth in this paragraph.

11 59. Defendants are without knowledge or information sufficient to form a belief as to
12 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
13 contained herein.

14 ||| 60. Defendants deny the allegations set forth in this paragraph.

15 61. Defendants are without knowledge or information sufficient to form a belief as to
16 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
17 contained herein.

18 62. Defendants are without knowledge or information sufficient to form a belief as to
19 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
20 contained herein.

Pendent Claims – Count 1

22 || Duty to prevent other officers from violating rights:

23 Defendants are without knowledge or information sufficient to form a belief as to the truth
24 of the allegations in this paragraph and on that basis, deny each and every allegation contained
25 herein.

26 | Obtaining identifications through suggestive methods:

1 Defendants deny the allegations set forth in this paragraph.

2 Obtaining False Statements:

3 Defendants are without knowledge or information sufficient to form a belief as to the truth
4 of the allegations in this paragraph and on that basis, deny each and every allegation contained
5 herein.

6 Manufacturing Evidence:

7 Defendants deny the allegations set forth in this paragraph.

8 Coercing a Confession:

9 Defendants deny the allegations set forth in this paragraph.

10 Tampering with Evidence:

11 Defendants deny the allegations set forth in this paragraph.

12 Negligence:

13 Defendants deny the allegations set forth in this paragraph.

14 Intentional infliction of emotional distress:

15 Defendants deny the allegations set forth in this paragraph.

16 Fraud:

17 Defendants deny the allegations set forth in this paragraph.

18

Count 2

19 **42 U.S.C. §1983 Witness Intimidation Tampering with Evidence Against Individual**
20 **Defendant Hamman and Defendant Officers One, Two, Three, and Four**
21 **Judge John M. Glen, Baltimore City Circuit Court noted in the NY Times that witness**
intimidation has become so pervasive that it is ruining the public's faith in the criminal
justice system

22 63. Defendants incorporate herein their responses to the allegations contained in
23 paragraphs 1 through 54, as previously set forth.

24 64. Defendants deny the allegations set forth in this paragraph.

25 65. Defendants are without knowledge or information sufficient to form a belief as to
26 the truth of the allegations in this paragraph and on that basis, deny each and every allegation

1 contained herein.

2 66. Defendants are without knowledge or information sufficient to form a belief as to
3 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
4 contained herein.

5 67. Defendants are without knowledge or information sufficient to form a belief as to
6 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
7 contained herein.

8 68. Defendants deny the allegations set forth in this paragraph.

9 69. Defendants deny the allegations set forth in this paragraph.

10 70. Defendants deny the allegations set forth in this paragraph.

11 71. Defendants deny the allegations set forth in this paragraph.

12 72. Defendants deny the allegations set forth in this paragraph.

13 73. Defendants are without knowledge or information sufficient to form a belief as to
14 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
15 contained herein.

16 74. Defendants are without knowledge or information sufficient to form a belief as to
17 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
18 contained herein.

19 **Pendent Claims – Count 2**

20 Dissuading a Witness:

21 Defendants deny the allegations set forth in this paragraph.

22 Tampering with Evidence:

23 Defendants deny the allegations set forth in this paragraph.

24 Kidnap:

25 Defendants deny the allegations set forth in this paragraph.

26 False Imprisonment:

1 Defendants deny the allegations set forth in this paragraph.
2 Harassment:
3 Defendants deny the allegations set forth in this paragraph.
4 Paragraph/footnote re "evidence":
5 Defendants are without knowledge or information sufficient to form a belief as to the truth
6 of the allegations in this paragraph and on that basis, deny each and every allegation contained
7 herein.

8 **Count 3**

9 **Cruel & Unusual Punishment**

10 **42 U.S.C. §1983 Against Individual Defendant Hamman and Defendant Officers One, Two,
11 Three, and Four**

12 75. Defendants incorporate herein their responses to the allegations contained in
13 paragraphs 1 through 54, as previously set forth.

14 76. Defendants deny the allegations set forth in this paragraph.

15 **Count 4**

16 **42 U.S.C. §1983 Invasion of Privacy & Slander Against Individual Defendant Hamman and
17 Defendant Officers One, Two, Three, and Four**
18 Fourth, Sixth, Ninth and Fourteenth Amendments

19 77. Defendants incorporate herein their responses to the allegations contained in
20 paragraphs 1 through 54, as previously set forth.

21 78. Defendants are without knowledge or information sufficient to form a belief as to
22 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
23 contained herein.

24 79. Defendants are without knowledge or information sufficient to form a belief as to
25 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
26 contained herein.

80. Defendants are without knowledge or information sufficient to form a belief as to
the truth of the allegations in this paragraph and on that basis, deny each and every allegation
contained herein.

1 81. Defendants deny the allegations set forth in this paragraph.
2 82. Defendants are without knowledge or information sufficient to form a belief as to
3 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
4 contained herein.

5 83. Defendants are without knowledge or information sufficient to form a belief as to
6 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
7 contained herein.

8 **Pendent Claims – Count 4**

9 Slander:

10 Defendants deny the allegations set forth in this paragraph.

11 Verbal Abuse & Harassment:

12 Defendants deny the allegations set forth in this paragraph.

13 Defamation of Character:

14 Defendants deny the allegations set forth in this paragraph.

15

16 Paragraph/footnote re: “The constitutional right to privacy:”

17 Defendants are without knowledge or information sufficient to form a belief as to the truth
18 of the allegations in this paragraph and on that basis, deny each and every allegation contained
19 herein.

20 Paragraph/footnote re “verbal abuse, defamation, slander etc:”

21 Defendants are without knowledge or information sufficient to form a belief as to the truth
22 of the allegations in this paragraph and on that basis, deny each and every allegation contained
23 herein.

24 Paragraph/footnote re: “The Constitution also protects to some extent:”

25 Defendants are without knowledge or information sufficient to form a belief as to the truth
26 of the allegations in this paragraph and on that basis, deny each and every allegation contained

herein.

Count 5

42 U.S.C. §1983 Deliberate Indifference Against Individual Defendant Tisdell and Defendant Garrigan

Fourth, Eighth, Fourteenth Amendment

84. Defendants incorporate herein their responses to the allegations contained in paragraphs 1 through 54, as previously set forth.

85. Defendants deny the allegations set forth in this paragraph.

8 86. Defendants deny that Defendant Tisdell told plaintiff his complaint about the
9 misconduct was “not serious.” With respect to the remaining allegations, defendants are without
10 knowledge or information sufficient to form a belief as to the truth of the allegations in this
11 paragraph and on that basis, deny each and every allegation contained herein.

12 87. Defendants are without knowledge or information sufficient to form a belief as to
13 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
14 contained herein.

15 || 88. Defendants deny the allegations set forth in this paragraph.

16 || 89. There is no paragraph 89.

17 || 90. Defendants deny the allegations set forth in this paragraph.

18 91. Defendants are without knowledge or information sufficient to form a belief as to
19 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
20 contained herein.

Pendent Claims – Count 5

22 || Abuse of Process:

23 Defendants deny the allegations set forth in this paragraph.

24 || Reckless Disregard:

25 Defendants deny the allegations set forth in this paragraph.

26 || Failure to Train, Supervise:

1 Defendants deny the allegations set forth in this paragraph.

2 Duty to prevent other officers from violating rights:

3 Defendants deny the allegations set forth in this paragraph.

4 Cover Up:

5 Defendants deny the allegations set forth in this paragraph.

6 Negligence:

7 Defendants deny the allegations set forth in this paragraph.

8

9 **Count 6**

10 **42 U.S.C. §1983 Against City of Oakland – Deliberate Indifference, Failure to Train,**
Supervise, Negligence
11 Eighth Amendment

12 92. Defendants incorporate herein their responses to the allegations contained in
13 paragraphs 1 through 54, as previously set forth.

14 93. Defendants deny the allegations set forth in this paragraph.

15 94. Defendants deny the allegations set forth in this paragraph.

16 95. Defendants deny the allegations set forth in this paragraph.

17 96. Defendants deny the allegations set forth in this paragraph.

18 97. Defendants deny the allegations set forth in this paragraph.

19

Count 7

20 **42 U.S.C. §1983 Against County of Alameda – Deliberate Indifference, Failure to Train,**
Supervise, Negligence

21 98. Defendants incorporate herein their responses to the allegations contained in
22 paragraphs 1 through 54, as previously set forth.

23 99. Defendants are without knowledge or information sufficient to form a belief as to
24 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
25 contained herein.

26 100. Defendants are without knowledge or information sufficient to form a belief as to

1 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
2 contained herein.

3 101. Defendants are without knowledge or information sufficient to form a belief as to
4 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
5 contained herein.

6 102. Defendants are without knowledge or information sufficient to form a belief as to
7 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
8 contained herein.

9 103. Defendants are without knowledge or information sufficient to form a belief as to
10 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
11 contained herein.

12

PRAYER FOR RELIEF

14 Defendants deny that Plaintiff is entitled to any of the relief sought in subsection (a) through
15 (k) of this paragraph as a result of the alleged acts and omissions of Defendants.

16

AFFIRMATIVE DEFENSES

17

I.

18 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that the
19 complaint fails to state a claim upon which relief can be granted.

20

II.

21 AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
22 allege, on information and belief, that plaintiff did not exercise ordinary care, caution, or prudence
23 to avoid the alleged event and/or accident; consequently, the subsequent injuries or damages, if any,
24 sustained by plaintiff were proximately caused by and contributed to by plaintiff's comparative
25 negligence, and any damages he might otherwise be entitled to should be proportionately reduced
26 by the degree of plaintiff's negligence.

III.

2 AS A FURTHER, THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
3 allege that the injuries and damages plaintiff complains of resulted from the acts and/or omissions
4 of others, or acts of God, and without any fault on the part of defendants.

IV.

6 AS A FURTHER, FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
7 allege that any party or individual who contributed to and/or caused the alleged injuries and
8 damages was not acting as its agent or with its knowledge or within the course and/or scope of
9 employment with defendant CITY OF OAKLAND.

V.

11 AS A FURTHER, FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
12 allege that, to the extent that plaintiff attempts to allege state claims, these are barred by all
13 applicable California Government Code protections and immunities, including, but not limited to,
14 sections 815 through 900. Said sections are pleaded as though fully set forth herein.

VI.

16 AS A FURTHER, SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
17 allege that all of the actions of defendants were undertaken in good faith and with the reasonable
18 belief that such actions were valid, necessary, reasonable, lawful and constitutionally proper,
19 entitling defendants to the qualified immunity of good faith.

VII.

21 AS A FURTHER, SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
22 allege that, if they in any fashion caused the injuries or damages alleged, although such liability is
23 expressly denied herein, their acts and/or omissions were reasonable and privileged.

VIII.

25 AS A FURTHER, EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
26 allege, on information and belief, that plaintiff failed to mitigate damages.

IX.

2 AS A FURTHER, NINTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
3 allege that, to the extent that plaintiff alleges or assert matters not contained in a legally sufficient
4 claim filed by them, this action is barred by the claims presentation requirements set forth in
5 California Government Code Section 905 et seq.

X.

7 AS A FURTHER, TENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, defendants
8 allege that if it was negligent or in any fashion caused the alleged injuries or damages, such acts
9 and/or omissions were discretionary and, thus, no liability exists, pursuant to Government Code
10 Section 820.2.

XI.

12 AS A FURTHER, ELEVENTH, SEPARATE, AND AFFIRMATIVE DEFENSE,
13 defendants allege that plaintiff's claims are barred by all applicable Government Code immunities,
14 including, but not limited to Sections 815, 815.2, 818, 818.2, 818.6, 818.8, 820.2, 820.8, 821,
15 821.6, 822, 822.2, 845, 845.4. Said sections are pleaded as though fully set forth herein.

XII.

17 AS A FURTHER, TWELFTH, SEPARATE, AND AFFIRMATIVE DEFENSE, defendants
18 allege that this action is barred, under Government Code § 945.6, by plaintiff's failure to file his
19 action within six months after denial of his claim.

XIII.

21 AS A FURTHER, THIRTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE,
22 defendants allege that this action is barred by all applicable statutes of limitations.

XIV.

24 AS A FURTHER, THIRTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE,
25 Defendants allege that Plaintiff lacks standing to bring this action to the extent that it is based on
26 alleged injuries to persons other than Plaintiff.

PRAYER

WHEREFORE, defendants pray that:

1. Plaintiff take nothing by his Complaint;
2. Defendants have judgment against Plaintiff;
3. Defendants be awarded their costs of suit; and
4. For such other and further relief as the Court may deem proper.

Dated: September 23, 2009

JOHN A. RUSSO, City Attorney
RANDOLPH W. HALL, Assistant City Attorney
WILLIAM E. SIMMONS, Supervising Trial Attorney
JENNIFER N. LOGUE, Deputy City Attorney

By: /S/Jennifer N. Logue
Attorneys for Defendant
CITY OF OAKLAND

PROOF OF SERVICE

Ken Phelon v. Jeremy Hamman, et al.
United States District Court Case No. C09-03393 SBA

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within document:

ANSWER OF DEFENDANTS CITY OF OAKLAND AND ROSS TISDELL TO COMPLAINT

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- .. by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.
- .. by personally delivering the document(s) listed above to the person(s) set forth below.

Ken Phelon
2932 – 55th Avenue
Oakland, CA 94605

Farand C. Kan
County of Alameda
Office of the County Counsel
1221 Oak Street, Suite 450
Oakland, CA 94612

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 23, 2009, at Oakland, California.

/S/
Cynthia S. Andrade